

ANNO QUINTO  
VICTORIÆ REGINÆ.

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SESSION II. No. I.

AN ORDINANCE for establishing a Supreme Court.

SUPREME COURT.

[22nd December, 1841.]

**B**E IT ENACTED by the Governor of New Zealand, with the advice and consent of the Legislative Council thereof, as follows:—

Preamble.

I.—CREATION OF COURT.

1. There shall be within the Colony of New Zealand a Court of record for the administration of justice throughout the Colony, which Court shall be called the Supreme Court of New Zealand.

Creation and style of Court.

II.—JURISDICTION OF COURT.

2. The Court shall have jurisdiction in all cases as fully as Her Majesty's Courts of Queen's Bench Common Pleas and Exchequer at Westminster have in England, and shall be a Court of oyer and terminer and gaol delivery and assize and *nisi prius*.

Legal.

3. The Court shall also have all such equitable jurisdiction as the Lord High Chancellor of Great Britain hath in England.

Equitable.

4. The Court shall also have exclusive jurisdiction in all questions respecting the validity of wills of personal property.

Ecclesiastical.

5. The Court shall also have power to appoint and control guardians of infants and their estates, and also keepers of the persons and estates of idiots, lunatics, and such as being of unsound mind are unable to govern themselves and their estates.

Lunacy.

6. The Court shall not take cognizance of any criminal case where the offence shall have been committed previous to the fourteenth day of January, one thousand eight hundred and forty.

Jurisdiction.

7. There shall be made a Seal of the Court, and all writs and other process issuing out of the Court shall be sealed therewith: Provided that until such Seal can be procured such writs and process shall be valid if signed by the Registrar.

Seal.

III.—CONSTITUTION OF COURT.

8. The Court shall be holden before one Judge, who shall be called the Chief Justice of New Zealand, and such other Judges as Her Majesty or the Governor shall from time to time be pleased to appoint.

Judges.

9. Every Judge before entering on his office shall take an oath in the form in the Schedule hereunto annexed faithfully to execute the duties thereof.

Oath of office.

10. There shall belong to the Court a Registrar and such inferior officers as to the Chief Justice shall appear necessary.

Officers of the Court.

11. The

*Supreme Court.*

- Registrar.** 11. The Registrar shall be appointed by his Excellency the Governor and shall be removable by him upon reasonable cause.
- Inferior officers.** 12. The inferior officers shall be appointed and discharged by and at the discretion of the Chief Justice.
- Barristers and solicitors.** 13. The Court shall enrol to practice therein as barristers such persons only as shall have been admitted barristers or advocates in Great Britain or Ireland, and to practice therein as solicitors such persons only as shall have been admitted as solicitors, attorneys, or writers in one of the Courts at Westminster Dublin or Edinburgh, or proctors in any Ecclesiastical Court in England, or shall have served such term of clerkship with a solicitor of the Court as shall be required by the general rule thereof. All persons so enrolled shall be removable from the rolls of the Court upon reasonable cause.
- Their practice.** 14. The barristers of the Court shall be allowed to act as solicitors and the solicitors of the Court to act also as barristers for the period of five years after the passing of this Ordinance, unless the Court shall in the meantime make order to the contrary.
- Sheriff.** 15. His Excellency the Governor shall, by warrant under his hands, appoint fit persons to be Sheriffs of the several counties or districts as the case may be of the Colony, who shall be removable by the Governor on reasonable cause: Provided that no Sheriff shall be in any way concerned in the conduct of any suit in any Court either as barrister, solicitor, or agent.
- Oath.** 16. The Sheriffs shall upon appointment take an oath in the form in the Schedule hereunto annexed faithfully to execute the duties of their office, and shall thereupon have all such powers and privileges and be liable to all such duties and responsibilities as any Sheriff by law hath or is liable to in England.
- Process when Sheriff disqualified.** 17. Whenever the Court shall direct any process which the Sheriff ought not by law to execute, the Court shall appoint some other fit person to execute the same, and in every such case the cause of such special proceeding shall be entered upon the records of the Court.
- Vacancy.** 18. In case of any vacancy in the office of Sheriff by death or otherwise, it shall be lawful for the District or County Judge to nominate and appoint a fit person to discharge the duties of the office so long as such vacancy shall continue.

## IV.—PRACTICE OF THE COURT.

- Trial by jury.** 19. All questions of fact upon which issue shall be taken in the course of any proceeding before the Court, and all questions of idiocy lunacy or unsoundness of mind, shall be decided by the verdict of a jury of twelve men.
- Indictments.** 20. For the purpose of bringing a criminal case under the cognizance of the Court, an indictment duly signed by the Attorney-General or Crown Prosecutor of the county or district wherein the Court shall be holden shall be as valid and effectual in all respects as if the same had been presented by a grand jury.
- Circuits.** 21. There shall be holden Circuit Courts for the despatch of civil and criminal business of the Court before one of the Judges thereof at such places and at such times as His Excellency the Governor shall, with the advice of the Executive Council, by Proclamation from time to time appoint: Provided that such Courts shall be holden twice in every year at each of the places so to be appointed.
- Powers of Judge on circuits.** 22. It shall be lawful for a single Judge of the Court on circuit or otherwise to hear and determine all cases of crimes and misdemeanours committed within the district, and to try and determine any issues of fact joined in any action or proceeding in the Supreme Court, and to exercise all such powers in respect of the persons and estates of infants, idiots,

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*County Courts.*

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idiots, lunatics, and persons of unsound mind, as are hereinbefore given to the Supreme Court.

**23.** It shall be lawful for the Judges of the Court from time to time to make rules for regulating the time and place of holding the Court, and the practice and pleadings upon all indictments informations suits and other proceedings therein, the proceedings of the Sheriff and other ministerial officers, the admission of barristers and solicitors, the fees and poundage to be paid to any officer, costs of suit and the taxing thereof, and all matters relating to the business of the Court, and such rules from time to time to alter or revoke: Provided that the same shall not be repugnant to any of the provisions hereinbefore contained. Rules for practice.

**24.** The rules to be made under the authority aforesaid shall have the same force and effect as if they had been inserted herein. Their force and effect.

**25.** All fees received by the Registrar as well as those received by the inferior officers of the Court shall be accounted for quarterly to the Colonial Treasurer, and shall form a fund, to be called the "Fee Fund," to be chargeable with the salaries of all the officers of the Court. Fee fund.

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**SCHEDULE.**

**FORM OF OATH.**

I, A.B., do swear that I will truly and faithfully and to the best and utmost of my skill and knowledge discharge the duties of [Judge of the Supreme Court or Sheriff, *as the case may be*] without fear favour or malice. So help me God.

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